

**Construction Board of Appeals
Meeting Minutes
September 3, 2003**

7:00 AM, Edina City Hall Lower Level Conference Room

Board members present: John Glover, Ed Noonan, Dave Fisher, Ron Clark, Quentin Collins

Public attendees: Grant Malcom - 5609 McGuire Rd., 952-941-2651; Judy Chirpich - 5601 McGuire Rd., 952-944-1013; Gerald Robinson - 5600 70th St. W, 952-941-4655

Staff present: Dave Velde, Steve Kirchman, Bev Haw

I. OPENING OF MEETING

Mr. Kirchman opened meeting with a roll call and introduced the newest member, John Glover.

Boardmember Glover gave a history of his experience and qualifications to serve on this Board.

Mr. Kirchman explained that this Board meets only on an “as needed” basis, the last meeting was in 2000.

II. ELECTION OF CHAIRMAN AND CO-CHAIR

Discussion by members as to whom would be interested in Chairman position and what is required of the Chairman. Boardmember Noonan made a motion to elect John Glover as Chairman. Motion seconded by Boardmember Clark, vote was unanimous to elect John Glover as Chairman. Chairman Glover suggests Boardmember Noonan as Vice Chair, Boardmember Noonan accepts, vote is unanimous to elect Boardmember Noonan as Vice Chairman.

II. CBA03-01: 5601 McGuire Rd – Appeal of Ordinance prohibiting above ground swimming pools.

Chairman Glover states the purpose of the meeting is the case of Peter and Judy Chirpich and their appeal of the ordinance prohibiting above ground pools. Members have reviewed the staff report and two members of the board have visited the site.

Mr. Kirchman stated that an above ground pool was discovered in response to a complaint, the Health Department, which regulates pools, notified the Chirpichs of the prohibitions in Edina against above ground pools and their appeal rights. The Chirpichs appeal was received on July 9, 2003. Notice was published and everyone within 200 ft was notified. Mr. Kirchman explained that the ordinance simply prohibits above ground pools, there is no discussion in the code about why. There are no rules in place to regulate them. Mr. Kirchman did do some research into when the ordinance was passed in 1979, and there are no verbatim minutes. The minutes simply noted that there was some discussion and that it was passed. There is an enclosed memo from Mr. Velde, the City Sanitarian that discusses what he believes to be the

reasoning for the prohibition of above ground pools. Based on the ordinance the staff does not support the request for a variance.

Chairman Glover requested opinions from neighbors present at meeting.

Mr. Grant Malcom, a neighbor of the Chirpichs, did not understand why they should not be allowed to have the pool. Mr. Malcom stated that there was no reasoning for not allowing the pools when it was put in place back in 1979. Mr. Malcom stated that he has no objections to the pool, and, in fact, loves the pool.

Boardmember Noonan raised the concern of no fencing around the pool and asked Mr. Malcom if that was a concern for him.

Mr. Malcom replied that fencing was not a concern.

Another neighbor, Mr. Robinson, stated that he had no objection to the pool at all and stated that since they have moved into their home they have allowed their 3 yr old daughter to frequently play in the pool. Mr. Robinson has no safety concerns regarding this pool and believes the design of this pool seems almost brilliant because it is a soft-sided pool which means it is easy for an adult to get in and push the sides down. They collapse right down and you can step right into it. The way it slopes up kids can't climb into the pool because they can't get a handhold. The depth is great for his 3 yr old, about 2 ft deep, so it is only chest deep allowing her to play and gain confidence in the water. Mr. Robinson stated that he is not bothered by the fact that there is no fence surrounding the pool, however, if there were a requirement for a fence he would certainly understand that. Mr. Robinson suggested that perhaps the original ordinance was based upon esthetics back in 1979 but that things have changed as far as types of entertainment equipment. Back in 1979 people went to Sears and paid \$50 for a swing set, now people are paying \$4,000 on big play structures, there are trampolines that are 20 ft wide with netting that goes up 12 – 15', people are doing sport courts. Values have shifted; people are putting a lot more emphasis on recreation and sports opportunities. This pool seems within a reasonable bounds, its under 20' diameter, and its only 2' deep. Mr. Robinson maybe would be opposed if it were 40' long and 4' deep at which point he would recommend it be installed in-ground. This pool is only up temporarily due to the short swimming season, its great for the younger kids. Mr. Robinson stated that his 3 yr old was intimidated going to the public pool, its much more difficult to supervise the young children at the public pool, there is a lot of rough housing and older children around, whereas this pool is of tremendous benefit.

Chairman Glover agreed that the ordinance does not clarify why above ground pools are not allowed. Chairman Glover said that he has looked at the pool and really could not see the objections to it. Chairman Glover stated that he has a trampoline in his backyard that is higher than this pool. When this ordinance was written 25 years ago there was no thought of trampolines.

Boardmember Clark asked for an explanation of what defines a "special purpose" pool.

Mr. Velde explained that it would be like a hot tub or a whirlpool. A “wading pool” is a pool that is less than 24” in depth and is constructed in the ground. Small plastic pools are not regulated, and can be any size if under 24” in depth.

Boardmember Noonan questions what liability the City would have if something were to happen to a child in an allowed above ground pool without fencing or any other restrictions that we currently have on other in ground or indoor pools. Boardmember Noonan recounted a situation 3 or 4 years ago when he sat on a hearing regarding egress around a pool deck that was too narrow to get a health rescue stretcher by, and the positioning of the stairway railing, and the City was concerned over possibility of some liability. Boardmember Noonan raised the issue of any possible exposure that the City might incur as a result of the approval of this pool. Boardmember Noonan indicated that he did not feel as though he has enough information to make an adequate decision. Boardmember Noonan was a paramedic for Hennepin County and assisted on 6 drownings - 3 in outdoor pools and 3 in indoor bathtubs, and understands the potential dangers. Because of the lateness of the season could we consider tabling this issue until we could study it further and basically give them the right to keep the pool up for the rest of the season and by next spring have the information available and go through Council or staff to study this and make a decision that would be in effect for the next swimming season.

Mr. Kirchman stated that one of the choices at this time would be to not take any action and refer it to the City Council for review and possibly changing the ordinance. If this appeal is denied they have the right to appeal. The pool would not be ordered to be removed until the appeal process has been completed. The Chirpichs can appear before the Council and try to get the ordinance changed.

Mr. Robinson disagreed with the statement that if this pool were to be allowed then all above ground pools would need to be allowed and suggested that the staff would be required to set forth safety regulations and parameters. Mr. Robinson suggested that staff could do additional research and set forth regulations regarding depth, length, type of sides, rescue accessibility. Mr. Robinson also recommended looking at ordinances from other cities.

Chairman Glover stated that this Board does not have the authority to overthrow this ordinance, or even change this ordinance and approve this variance. Times have changed and what is backyard recreation is a lot different than it was 25 years ago. Chairman Glover suggested that although he personally had no problem with the pool, the Board can’t change the ordinance. What we can do is take this issue to Council.

Mr. Velde then addressed the 1979 decision to restrict above ground pools. At that time the City Council was not sure whether we should restrict above ground pools or not. The reason they held it over for one meeting was they wanted to get some press out to the public. There was an article written in the local paper and the public did not respond. Some council members did speak to people that they knew and some thought that the public did not want to see above ground swimming pools so the Council decided to keep the ordinance as it was and not to allow above ground swimming pools.

Chairman Glover stated that, in his opinion, the above ground pool prohibition was not related to health issues, but health issues need to be considered and should be put into any regulations which would be adopted. Issues of concern would be chlorine levels, PH balance, bacteriological counts and other issues that would be the same as owners of in ground pools. The pool owners would have some duties that they would have to live up to.

Mrs. Chirpich agreed that these levels must be maintained or you will end up with a green pool that would not be safe. This ordinance does not regulate pools with a depth of less than 24". Mrs. Chirpich indicated that her pool is 25 ½" deep.

Chairman Glover questioned if this pool could have an overflow valve which would keep the depth under 24" and the Board could make a recommendation to the City at which time they could review the ordinance and determine restrictions and regulations.

Boardmember Fisher said that he did not have a problem with this particular pool, however, this would raise the question of what would be allowed and what would not be allowed and that approving this pool would open a can of worms.

Chairman Glover suggested that this ordinance would not be studied and changed before the next pool season.

Boardmember Noonan is not comfortable with recommending a way around the interpretation of the ordinance as it stands now. The Board has specific choices to act on at this time. Boardmember Noonan asked staff that if the Board recommends the issue be referred to Council, would the staff agree to investigate on behalf of the Council and make a staff recommendation.

Chairman Glover asked Mr. Velde if the Health Department does inspection of in ground swimming pools.

Mr. Velde replied that we do a final inspection when they are installed but we do not do maintenance inspections. The only maintenance inspections that are done by the City are on public and semi-public pools such as apartment buildings, the aquatic center, the YMCA, that type of place. Mr. Velde indicated that there are over 500 private swimming pools in the City and we do not do maintenance inspections on them. The only issue on the books regarding in ground swimming pools is the one that was in question in 1979. That pool was partially above ground and they did finish off the grade around the entire pool so that it was below grade. That was the situation that caused the wording, "above ground" to be included in the ordinance.

Mr. Robinson's suggested another option available to the Board. Instead of referring this issue to Council the Board could direct staff to further research above ground pools and report back with recommendations to be discussed and forwarded to Council.

Chairman Glover discussed with Mr. Robinson the extent that this board could do further study and make recommendations to the Council. Chairman Glover suggests that a recommendation be made to request staff to revisit the issue, look at the issue again, and make another staff report.

The current report was made by Mr. Velde but the recommendation to deny the ordinance came from Mr. Kirchman based on the facts of how the ordinance stands today.

Boardmember Collins pointed out the ordinance is very clear, and even though we are considerate of this particular case, the ordinance is very straightforward and does not give us any "wiggle" room.

Chairman Glover states that we can recommend that the staff look at the issue again, put it out for public comment, and consider recommending ordinance revisions to the Council.

Boardmember Collins agreed that we are headed in the right direction.

Mrs. Chirpich stated that she is hearing a degree of support to at least look at updating or changing the current ordinance. Mrs. Chirpich requested further consideration and study on the safety and esthetic issues and to consider a variance for this pool. Mrs. Chirpich also suggested that other backyard play sets, trampolines, hot tubs and additional play items are relatively new items and should also be looked at.

Chairman Glover replied to Ms. Chirpich that the board would not be comfortable going to the Council to support this particular pool.

Ms. Chirpich responded that she was not particularly requesting a specific variance for their pool but support to revise the City Code with different parameters regarding size, etc. and bring the City Code up to date with regard to all recreational equipment.

Boardmember Noonan states that he has great confidence in the Board, the Council and the City staff; however, he does not feel that at this time the Board could grant a variance for this particular pool. Boardmember Noonan would recommend reexamining the ordinance, do further study and make recommendations to the Council. Examination of health and safety issues, fire department rescue issues, possible liability issues and possible insurance issues need further study to make an informed decision.

Mr. Kirchman suggested that a motion be made to direct staff to make recommendations on possible changes to the ordinance and report back to the Board at the next meeting. The Council could always direct the board to further investigate. The staff will study health and safety issues and report to the board. This staff report will be distributed prior to the next scheduled meeting to give everyone an opportunity to review the recommendations.

A motion to direct staff to do further study and report back to the board was made by Boardmember Noonan. The motion was seconded by Boardmember Fisher. No discussion. Chairman Glover called for a vote; the result was unanimous approval of this motion.

Boardmember Noonan thanked Mrs. Chirpich for the opportunity to look into this issue.

Boardmember Fisher asked Mrs. Chirpich if the cover was not on the pool and the removable ladder was not in the pool and a 2 year old fell in, would the 2 yr old be able to get out?

Mrs. Chirpich replied "no".

Discussion closed and the residents left the meeting at this time.

**IV. CBA03-02: 6301 Knoll Dr. S. - Edina City Code, Section 450.06,
Subd 8, regulating pool ladders**

Mr. Kirchman stated that the next meeting date would be set to discuss the requirement for a ladder in a pool. The approved plans for the pool required a ladder that was not installed.

Boardmember Fisher suggested that homeowner just install the ladder.

Mr. Kirchman stated that homeowner did not want to do that. A final inspection for this pool has not been approved.

**V. NEXT MEETING DATE AND AGENDA – Monday, September 22, 2003
7:00 A.M.**

The first possible date for the next meeting would be September 22, 2003 or anytime after that date. Staff report for the Chirpich appeal will be ready by that time.

Boardmember Noonan requested an updated roster including cell phone numbers. Board members discussed issues that will be addressed in the staff report regarding above ground pools. Future issues that may need to be addressed would include trampolines, skateboards, rollerblades, hot tubs, swing sets, soccer goals and other recreational items.

Boardmember Noonan made a motion to adjourn; Chairman John Glover seconded it.

VI. ADJOURNMENT: 8:00 A.M.

Respectfully submitted

Steve A. Kirchman
Board Secretary